

NATURAL RESOURCE COMMISSION[571]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 461A.35, 461A.41, and 461A.57, the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 54, “Restriction on Removal of Plant Life,” Iowa Administrative Code.

These amendments establish a means for the Department to allow the introduction of aquatic plant species in public waters, as defined in 571—13.2(455A,461A,462A), for the purpose of enhancing water quality and aquatic habitats and a means for the removal of aquatic plants from public waters for the purpose of establishing a designated travel lane from a boat dock to open water. These amendments also delete language which relates to the harvesting of American ginseng and references harvesting regulations established in 571—Chapter 78.

Any interested person may make written suggestions or comments on the proposed amendments on or before January 5, 2010. Such written materials should be directed to Martin Konrad, Department of Natural Resources, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319-0034; fax (515)281-6794; or E-mail Martin.Konrad@dnr.iowa.gov. Persons who wish to convey their views orally should contact the Fisheries Bureau at (515)281-6976 or at the Bureau offices on the fourth floor of the Wallace State Office Building.

Also, there will be a public hearing on January 5, 2010, at 1 p.m. in the Fourth Floor East Conference Room, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa. At the public hearing, persons may present their views either orally or in writing. Participants will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend the public hearing and have special needs, such as those related to hearing or mobility impairments, should contact the Department of Natural Resources and advise of specific needs.

These amendments are intended to implement Iowa Code sections 461A.35, 461A.41 and 461A.57. The following amendments are proposed.

ITEM 1. Amend **571—Chapter 54**, title, as follows:

RESTRICTION ~~RESTRICTIONS~~ ON ~~INTRODUCTION AND~~ REMOVAL OF PLANT LIFE

ITEM 2. Amend rule 571—54.1(461A) as follows:

571—54.1(461A) Mushrooms and asparagus. Lands under the jurisdiction of the commission shall be open for the ~~taking~~ harvesting of mushrooms and asparagus during the hours the areas are open to the public.

ITEM 3. Amend rule 571—54.2(461A) as follows:

571—54.2(461A) Fruit. Lands under the jurisdiction of the commission shall be open for the ~~taking~~ harvesting of all varieties of nuts, fruits, and berries unless signs are posted prohibiting such activity. Nut, fruit, and berry gathering shall be permitted only during the hours the areas are open to the public and shall not be permitted in state preserves unless otherwise allowed by the preserves management plan.

ITEM 4. Amend rule 571—54.3(461A) as follows:

571—54.3(461A) American ginseng. The harvesting of American ginseng (*Panax quinquefolius*) is subject to regulation by 571—Chapter 78.

~~54.3(1) Lands under the jurisdiction of the commission except state parks and preserves shall be open for the taking of American ginseng (*Panax quinquefolius*) during the season established by 571—78.2(456A).~~

~~54.3(2) When digging is done to collect ginseng, the earth is not to be unduly disturbed. The collector shall, immediately upon removal of the plant, restore the disturbed area as nearly as possible to its original condition.~~

~~This rule implements Iowa Code section 461A.41.~~

ITEM 5. Amend rule 571—54.4(461A) as follows:

571—54.4(461A) Trees. The commercial harvest of trees from lands under the jurisdiction of the commission shall be done in accordance with 561—8.5(17A,456A,461A) and 561—8.6(455B), according to the department's Forest Ecosystem Management Guide, approved by the natural resource commission on December 8, 1994, and hereby adopted by reference.

~~This rule is intended to implement Iowa Code sections 461A.35 and 461A.41.~~

ITEM 6. Adopt the following **new** rule 571—54.5(461A):

571—54.5(461A) Aquatic plants. This rule applies to the introduction and removal of plants in public waters as those waters are defined by rule 571—13.2(455A,461A,462A). For purposes of this rule, aquatic plants are those listed in subrule 54.5(6) and include vegetation that exists at or below the ordinary high water line of a waterway.

54.5(1) Permits. The department may issue permits for the introduction and removal of aquatic plants in public waters. To be considered for a permit under this rule, applicants shall use the department's application form for sovereign lands construction permits, as described in rule 571—13.9(455A,461A,462A), and shall complete all relevant information on that application form. Applicants shall also provide any additional information as may be necessary, as described in rule 571—13.10(455A,461A). The term of the permit shall be stated in the permit. Permits are nontransferable and shall be subject to reevaluation upon expiration. Permits may be issued for between one and five years.

54.5(2) Evaluation. The department shall evaluate all permits sought under this rule in accordance with the evaluation criteria enumerated in rule 571—13.6(455A,461A,462A). In addition, the department shall consider the following criteria:

a. For aquatic plant introduction:

(1) Unless otherwise approved by the department, all introduced plants shall be included in the list provided in subrule 54.5(6);

(2) Introduced plants shall not include cultivars;

(3) Plants shall be introduced for the purposes of preventing shoreline erosion, stabilizing bottom sediment, providing fish or wildlife habitat, or removing nutrients from the water;

(4) Plants shall be thoroughly rinsed away from the water into which they are being introduced prior to being transported to the site if the plants have not been cultivated on site in a manner to prevent any foreign nonplant or seed material from entering the water prior to introduction; and

(5) Plants shall be obtained from a seed source that is within 50 miles of the introduction area and from stocks of only cultivated material (i.e., material that has not been taken from natural areas), or from a source that is approved by the department. Approval for a seed source may be sought from the department by contacting the area fisheries management biologist.

b. For aquatic plant removal:

(1) The plants shall be removed by hand-cutting, hand-pulling, hand-raking or mechanical cutting only;

(2) The plants shall be removed to establish a designated travel lane from a boat dock that has been permitted in accordance with 571—Chapter 16. Such travel lane shall not exceed a 15-foot width, and the placement of such lane shall be subject to the review and approval of the department. A travel lane allowed under these rules may be in the same location during the term of this permit, may be sited by the department to accommodate vegetation, and may not necessarily be the most direct path from the dock to the open water area; and

(3) All plant material removed under the permit must be left in place or collected and composted on the land owned, leased or otherwise subject to use by the applicant that is adjacent to the removal area.

Unless otherwise provided by these rules, in no event may a person be allowed to apply chemicals including, without limitation, pesticides or herbicides to remove aquatic plants from public waters. For nonpublic waters that meet certain designations in 567—Chapter 66, a person may be required to seek a permit under the rules established herein to use pesticides.

54.5(3) Inspection requirements. For the purpose of inspecting for compliance with permit conditions, the department shall have the right to enter the property attached to the public water at or near the place of introduction or removal. This inspection shall include, without limitation, identification of introduced species; a determination as to whether the travel lane is being maintained in accordance with the permit conditions; and whether plant material, if removed, is left on site.

54.5(4) Violations. Persons in violation of this rule are guilty of a simple misdemeanor as described by Iowa Code section 461A.57.

54.5(5) Exceptions.

a. Activities accomplished by the department or its agents to introduce or remove aquatic vegetation in public waters shall be deemed appropriate and shall not be subject to the permit requirements of this rule provided the activity is in the public's interest and the activity does not constitute one of the prohibited activities described in 571—subrule 13.6(2).

b. Cities and counties in Iowa may use chemicals, including pesticides and herbicides, to remove aquatic vegetation from water intake structures. However, such cities and counties shall be required to obtain a permit under this rule and rules in 567—Chapter 66, as may be required, for such activities.

c. Aquatic vegetation located in public waters may be removed by persons without a permit under this rule only after the department, in its sole discretion, determines and evidences in writing that a hazard or other detrimental condition exists and the proposed mitigative activity is appropriate. Such activity shall be limited only to the work required to address the immediate hazard or other detrimental activity. Any removal allowed by this rule shall conform to the requirements enumerated by the department regarding such removal, or the removal shall be deemed an unauthorized action resulting in damage to public waters. Persons proposing to remove hazards must contact a local department official and request an exception to a permit. The department official shall inspect the hazard or detrimental condition and provide written authorization to proceed or shall require the person to apply for a permit under this rule.

54.5(6) Appropriate plants. The department is committed to maintaining the natural integrity of public waters in the state and strengthening native populations of vegetation and wildlife in those waters. To that end, the following table comprises the plants that may be permitted to be introduced into public waters:

Scientific name	Common name
<i>Acorus americanus</i>	Sweet Flag
<i>Alisma plantago-aquatica</i>	Water Plantain
<i>Asclepias incarnata</i>	Marsh Milkweed
<i>Bidens cernua</i>	Nodding Beggars Ticks
<i>Bidens coronata</i>	Tickseed Sunflower
<i>Brasenia schreberi</i>	Water Shield
<i>Calamagrostis canadensis</i>	Blue Joint Grass
<i>Caltha palustris</i>	Marsh Marigold

<i>Carex atherodes</i>	Wheat Sedge
<i>Carex comosa</i>	Longhair Sedge
<i>Carex cristatella</i>	Crested Sedge
<i>Carex hystericina</i>	Bottlebrush Sedge
<i>Carex lacustris</i>	Hairy Sedge
<i>Carex normalis</i>	Greater Straw Sedge
<i>Carex pellita</i>	Wooly Sedge
<i>Carex prairea</i>	Prairie Sedge
<i>Carex scoparia</i>	Broom Sedge
<i>Carex stipata</i>	Awlfruit Sedge
<i>Carex stricta</i>	Upright Sedge
<i>Carex tribuloides</i>	Blunt Broom Sedge
<i>Carex vulpinoidea</i>	Fox Sedge
<i>Ceratophyllum demersum</i>	Coontail
<i>Eleocharis acicularis</i>	Needle Spikerush
<i>Eleocharis obtuse</i>	Blunt Spikerush
<i>Elodea canadensis</i>	Canada Waterweed
<i>Eupatorium perfoliatum</i>	Boneset
<i>Glyceria striata</i>	Fowl Manna Grass
<i>Iris versicolor</i>	Blue Flag Iris
<i>Juncus dudleyi</i>	Dudley's Rush
<i>Juncus torreyi</i>	Torrey's Rush
<i>Leersia oryzoides</i>	Rice Cutgrass
<i>Lobelia siphilitica</i>	Great Lobelia
<i>Lysimachia ciliate</i>	Fringed Loosestrife
<i>Lythrum alatum</i>	Winged Loosestrife
<i>Muhlenbergia mexicana</i>	Leafy Satin Grass
<i>Muhlenbergia racemosa</i>	Marsh Muhly
<i>Nymphaea tuberosa</i>	White Water Lily
<i>Poa palustris</i>	Fowl Bluegrass
<i>Polygonum amphibium</i>	Water Smartweed
<i>Pontederia cordata</i>	Pickernelweed
<i>Potamogeton nodosus</i>	Longleaf Pondweed
<i>Ranunculus secleratus</i>	Cursed Crowfoot
<i>Sagittaria latifolia</i>	Broadleaf Arrowhead
<i>Schoenoplectus acutus</i>	Hardstem Bulrush
<i>Schoenoplectus fluviatilis</i>	River Bulrush
<i>Schoenoplectus tabernaemontani</i>	Soft-Stem Bulrush
<i>Scirpus atrovirens</i>	Green Bulrush
<i>Sparganium eurycarpum</i>	Giant Burreed
<i>Spartina pectinata</i>	Prairie Cord Grass
<i>Stuckenia pectinatus</i>	Sago Pondweed
<i>Typha latifolia</i>	Broadleaf Cattail

In addition, an applicant may propose, as part of the application, species that do not appear on this list, which the department will consider. The department's consideration of species not on this list will be

based on the commitment described above as well as the potential impact of the proposed species to the public water and ecosystem.

ITEM 7. Adopt the following **new** implementation sentence in **571—Chapter 54**:
These rules are intended to implement Iowa Code chapter 461A.